Subject Index

	Page
Statement of the case	1
Argument	5
No important principle involved	5
No conflict between circuits	5
No conflict with Ryan decision	8
The joint industry board was a labor organization	8
Payments to the Joint Industry Board constitute payments of a thing of value to Local 75	9
Jointly controlled trusts for other purposes not permitted	10
Conclusion	12

Table of Authorities Cited

Cases	Pages
U. S. v. Ryan, 350 U.S. 299	8, 9
United Marine Division v. Essex Transportation Co., 216 F. 2d 410	5, 6, 7

Statutes

Labor Management Relations Act of 1947, 61 Stat. 136, 29 U.S.C.:	
Section 141, et seq.	1
Section 302	7
Section 302(c)(3)	3
Section 302(c)(5)	5, 7

Miscellaneous

Supplement to the Senate Report on Senate Bill 1126 which appears at page 458 of the Legislative History LMRA 1947	2

In the Supreme Court
OF THE
United States

OCTOBER TERM, 1957

No.

SHEET METAL WORKERS INTERNATIONAL ASSOCIATION, et al.,
Petitioners,

vs.

SHEET METAL CONTRACTORS ASSOCIATION OF SAN FRANCISCO, a Corporation, et al.,
Respondents.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI.

STATEMENT OF THE CASE.

We do not believe that the petition herein sets forth the case in its true light.

The statute (Labor Management Relations Act of 1947, 61 Stat. 136, 29 U.S.C. Sec. 141 *et seq.*), reads in part as follows:

> "Sec. 302. (a) It shall be unlawful for any employer to pay or deliver, or to agree to pay or deliver, any money or other thing of value to any representative of any of his employees who are employed in an industry affecting commerce."

The purpose of this legislation is shown by the supplement to the Senate Report on Senate Bill 1126 which appears at page 458 of the Legislative History LMRA 1947, and which reads in part as follows:

> "The amendment proceeds on the theory that union leaders should not be permitted, without reference to the employees, to divert funds paid by the company, in consideration of the services of employees to the union treasury or the union officers, except under the process of strict accountability."

This case does not involve the question whether an employer can put some of his *own money* into a joint venture with a union. It involves *wages,* or, in the language of the Senate Committee, "money paid by the company in consideration of the services of employees."

The entire legislative history of this section shows that it was intended to provide that *wages* of union members should not be diverted from their pay checks to union funds or to finance union programs *except as specifically permitted by the statute.*

There *is* a perfectly plain and simple way under the statute by which all of the laudable purposes in which the union is interested can be accomplished.

If the union wishes to devote two and one-half cents an hour or ten cents an hour *of the earnings of its members* to those laudable purposes it should *increase its dues* by this amount and the transaction would be entirely legal and not in violation of the statute.

This, however, would require the concurrence of two things:

First. An affirmative vote of the union membership in favor of increasing the dues for the purpose of financing these projects.

Second. A written "checkoff" or authorization to the employer to deduct this sum from the wages of his employees and to pay it to the union.

The statute provides that employees shall have the *right* to say how much of their earnings shall be taken out of their pay checks and paid over to the union or for its benefit for such purposes and that each employee must individually and *personally authorize* this over his own signature. (Sec. 302(c)(3).)

For reasons best known to the union it refuses to follow this procedure. Without complying with these statutory requirements it seeks to divert part of the earnings of its members from their pay checks and into a trust established to finance and operate the Joint Industry Board described in the petition herein.

The union argues that it may lawfully do this because the trust is a legal entity, separate and distinct from the union, and therefore payment to the trust

does not constitute payment to a "representative" as prohibited by the statute. (Petition pp. 15-17.)

We emphasize here that this "trust" is not an independent agency. The opinion under attack in this petition plainly demonstrates that it was not. The union originated it. The union appoints and controls one-half of the trustees who run it. The union threatens to cause a work stoppage of plaintiffs' employees to compel plaintiffs to contribute to it. As pointed out in the opinion of the Ninth Circuit, the trust could not function or operate without the concurrence and participation of the union. The basic fact here is that the union seeks to "divert funds paid by the company in consideration of the services of employees" from the pay checks of employees, not to an independent agency or enterprise, but to *a union program over which the union exercises a very substantial degree of control.*

The fact that the union program may be laudable is immaterial. The statute does not permit it. If the money were paid *directly* to the union by the employer the fact that the union intends the money to be used for apprenticeship training, dispute settlement, voluntary arbitration or the like, would not prevent the payments from being a violation of the statute. Paying the money not to an independent agency but to a fund over which the union has one-half the power of control is no less a violation.

What the union is *really* saying in its petition is that Congress *should* have included these laudable purposes within the exemptions set forth in Section

302(c)(5). The Congress, however, did not do so and the United States Court of Appeals for the Ninth Circuit properly declared that this attempt to siphon off money from the pay checks of employees and into such union-sponsored projects was a violation of the statute.

ARGUMENT.

NO IMPORTANT PRINCIPLE INVOLVED.

It is always important that the law be enforced. That, however, is not the kind of "importance" which demands that the case be reviewed by this Court. The fact that other unions are interested in trying to do the same thing does not make the case "important" in that sense either. Where there is a plain, simple, easy and legal way under the statute by which the union can carry out and finance as many laudable programs as it sees fit, *namely, by dues increase and written check-off* on individual members, the insistence of this union that it be permitted to do this in *some other way* does not justify a review by this Court.

NO CONFLICT BETWEEN CIRCUITS.

There is no conflict between the decision of the United States Court of Appeals for the Third Circuit in the *Essex* case (*United Marine Division v. Essex Transportation Co.*, 216 F. 2d 410) and the decision of the United States Court of Appeals for the Ninth Circuit in the case at bar.

As pointed out by the Court below, the factual situations are totally different. In the *Essex* case the opinion states:

> "This is an appeal from a judgment for the defendant in a suit brought to compel the payment by the employer of money *to a pension trust for employees.*" (Emphasis supplied.)

In other words, it was a trust "for the sole and exclusive benefit of the employees * * * and their families and dependents" as specified in Section 302 (c).

In referring to the duties of the trustees under such trust the Court in the *Essex* case said:

> "They are trustees of a fund and have fiduciary duties in connection therewith as do any other trustees. *The terms under which they act were carefully spelled out.*" (Emphasis supplied.)

Thus, the trust was in exact compliance with the requirements of the statute.

The *only* questions in the *Essex* case were: (1) Whether Essex Transportation Company could lawfully pay into this trust where it had not been a member of the employer association or a party to the contract creating the trust; and (2) whether it was bound by an oral promise to do so.

A mere reading of the statute will reveal that while the *trust agreement* is required to be set forth in writing, including "the detailed basis on which such payments are to be made" to employees and their

families and dependents, it *does not* require that the *promise to pay* into the trust be in writing as suggested at page 10 of the petition herein.

For this reason, the Third Circuit decision *did not* "necessarily recognize that the provision in subdivision (c) (5) of Section 302 excepting trust funds was not applicable" as claimed at page 10 of the petition herein.

We quote from the opinion in the *Essex* case as follows:

> "This *fund was set up by an agreement in writing* and the trustees had also established, through an agreement in writing, relations with a bank of deposit for custody of the funds and payment as specified in their agreement. But *Essex Transportation Co. was not a member of this association and, therefore, not a party to any contract which the association made with the union.*" (Emphasis supplied.)

The language emphasized sets forth the point of law involved in the *Essex* decision.

As pointed out in the opinion of the Ninth Circuit, the *Essex* case did *not* decide that payment to any and every trust jointly controlled by trustees appointed by a union and by employers was exempt from the prohibitions of Section 302 of the statute. Therefore, the Ninth Circuit did *not* "reject" the interpretation of the word "representative" by the Third Circuit, as claimed by petitioners (Petition p. 7), and there is no conflict between the decisions in the Third Circuit and the Ninth Circuit.

NO CONFLICT WITH RYAN DECISION.

There is no conflict between the decision of the Court of Appeals for the Ninth Circuit and the opinion of this Court in the *Ryan* case (*U. S. v. Ryan,* 350 U.S. 299) for the simple reason that they do not involve the same questions, either of law or fact.

The *Ryan* case involved the question whether the term "representative" as used in the statute meant only "exclusive bargaining representative."

This Court held that it did not. In so deciding, this Court declared that "a narrow reading of the term 'representative' would substantially defeat the congressional purpose." The Ninth Circuit followed and applied that principle in this case.

Petitioners argue that the opinion of this Court in the *Ryan* case "did not lend any support" to and did not "authorize" the conclusion of the Ninth Circuit in this case. (Petition pp. 12, 13.) If this be so, it is only because the two cases involve different questions of law and fact. For the very reason that they *do* involve different questions of law and fact the two decisions *cannot* be in conflict.

THE JOINT INDUSTRY BOARD WAS A LABOR ORGANIZATION.

The opinion of the Ninth Circuit clearly sets forth how and why the Joint Industry Board falls within the statutory definition of a labor organization. It so clearly does so that there is no need to resort to a "broad" or "liberal" interpretation of the language

of the statute in order to bring the Joint Industry Board within its terms. If it *were* necessary to do so, however, this Court in the *Ryan* case clearly indicated that such course should be followed in order not to "defeat the congressional purpose."

The Trust sets forth as one of its purposes:

> "To aid in the settlement of any and all disputes of any nature whatsoever which may arise between the union, its members, agents and/or representatives and the above-named association, its members, and all other employers of union members who are signatories to agreements with the union."

Prior to the establishment of this trust Local 75, admittedly a labor organization, performed this function. By the device of establishing a Joint Industry Board Local 75 has transferred a part of its own work, functions and duties to such Board which, to that extent is a labor organization.

PAYMENTS TO THE JOINT INDUSTRY BOARD CONSTITUTE PAYMENTS OF A THING OF VALUE TO LOCAL 75.

In order to violate the statute it is not necessary or indispensable that the money be paid *directly* to the labor organization. For example: Payments by an employer to the union's landlord or insurance carrier would relieve the union of certain operating expenses and would thereby constitute a "thing of value" as specified in the statute. As pointed out in the opinion of the Ninth Circuit, Local 75 did not

abdicate or divest itself of the functions of settling disputes with the employers to a completely independent agency. It turned them over to the Joint Industry Board, an agency which *could not function* without the participation and consent of Local 75. *All* the expenses of operating this agency were paid for by the employers. Therefore, by this device Local 75 caused the employers to pay a part of its own operating costs and expenses and thereby received "a thing of value" from them. This is forbidden by the statute.

JOINTLY CONTROLLED TRUSTS FOR OTHER PURPOSES NOT PERMITTED.

The union asks this Court to consider this case on the grounds that:

> "The validity of numerous legitimate trust funds created through collective bargaining, for administration of joint labor-management programs for apprenticeship training, disputes settlement and voluntary arbitration, industrial safety and the like, has been placed in doubt by the instant decision of the Ninth Circuit Court of Appeals."

Notwithstanding the fact that the statute plainly declares that such jointly controlled funds must be for the "sole and exclusive benefit of employees * * * and their families and dependents", the union seeks to have this Court declare that joint labor-management trusts for any of the above purposes enumerated by the union are *also* permitted by the statute.

The reply to this claim appears in the following language from the opinion of the Ninth Circuit as follows:

> "It is said that the trustees were not representatives of employees because they were trustees of a welfare fund, and were not acting as representatives of either union or employers since they had fiduciary duties in connection with a trust fund. We think that a mere reading of § 302 demonstrates the fallacy of any such position. If that section, as Essex suggests, means that 'trustees of a fund' are for that reason not representatives within the meaning of the Act, then part 5 of subdivision (c) was wholly unnecessary and all the careful statement of an exception found there would be wholly meaningless. For the exception does not follow from the mere fact that there are trustees of a fund, but the fund must be subject to all the detailed limitations there stated. But the decision in United States v. Ryan brushed away all such narrow notions of the meaning of the term 'representatives' as that used in Essex. The court said (p. 304, 350 U.S.): 'Further, a narrow reading of the term "representative" would substantially defeat the congressional purpose. In 1946 Congress was disturbed by the demands of certain unions that the employers contribute to "welfare funds" which were in the sole control of the union or its officers and could be used as the individual officers saw fit. The United Mine Workers' demand that mine operators create a welfare fund for the union by contributing 10 cents for each ton of coal mined, caused the Congress to act. The Case Bill H.R. 4908, 79th Cong., 2d Sess.,

> which regulated welfare funds in a manner similar to § 302 was enacted in 1946, but was vetoed by the President. The following year the Taft-Hartley Act containing § 302 was passed over another veto. But, if "representative" means only the "exclusive bargaining representative," the explicit limitations on welfare funds in § 302 (c) (5) may be easily evaded. Payments made directly to union officials, or to other individuals as *trustees* would apparently be excluded from § 302. Thus, a narrow construction would frustrate the primary intent of Congress.'" (Emphasis supplied.)

This Court, itself, has declared that the statute may not be evaded by the simple expedient of interposing a trustee between the employer and the union. The statute prescribes *what* trusts are permitted and the Ninth Circuit correctly declared that the enumeration of these trusts was unnecessary if *all* trusts for *any* purposes were permitted.

CONCLUSION.

If we thought that this Court could be persuaded to decide the many unresolved questions involving labor-management trusts we would gladly join with petitioners in asking this Court to issue such a writ. Only *this* case is before the Court however, and it was decided on its particular facts.

As it is not the function of this Court to issue advisory opinions on unresolved and, as yet, unliti-

gated questions, it is respectfully urged that the petition be denied.

Dated, San Francisco, California,
December 26, 1957.

Respectfully submitted,
ROTH AND BAHRS,
By GEORGE O. BAHRS,
Attorneys for Respondents.